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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA • SAN DIEGO
10

11 DAVID SANTOYO,

12 Plaintiff,

13 vs.
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15 MANUEL SOTO, JR., JAMES
16 SILBERMAN, JUAN RAMON SALAZAR,
AND DOES 1 TO 10,

17 Defendants.
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Case No. 08-CV-1000 W BLM

Assigned to Hon. Thomas J. Whelan
Courtroom 7

**DEFENDANT MANUEL SOTO, JR.'S
NOTICE OF MOTION AND
MOTION TO DISMISS**

[Fed. R. Civ. P. 12(b)(1)]

**NO ORAL ARGUMENT PURSUANT
TO LOCAL RULE**

Date: August 25, 2008

Filed concurrently with:

- Memorandum of Points and Authorities;
- Request for Judicial Notice;
- Declaration of Arthur A. Severance;
- Declaration of Manuel Soto, Jr.; and
- Foreign Authorities in Support of Motion to Dismiss

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1 TO EACH PARTY AND THE ATTORNEYS OF RECORD FOR THIS ACTION:

2 **PLEASE TAKE NOTICE** that on August 25, 2008, or as soon thereafter as counsel
 3 may be heard, the Honorable Thomas J. Whelan presiding, Defendant MANUEL SOTO, JR.
 4 will and does hereby move the Court to dismiss the Complaint filed by Plaintiff DAVID
 5 SANTOYO for a lack of subject matter jurisdiction. Plaintiff's Complaint fails to make
 6 allegations required to support admiralty tort jurisdiction and is therefore facially insufficient.
 7 Moreover, the jurisdictional allegations in Plaintiff's Complaint are insufficient supported by
 8 fact.

9 This Motion is made pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure
 10 and is based upon this Notice of Motion and Motion; the accompanying Memorandum of
 11 Points and Authorities, Defendant's Request for Judicial Notice, Declaration of Arthur A.
 12 Severance, Declaration of Manuel Soto, Jr., and the exhibits filed in support of this Motion;
 13 the files and records in this action; and any further evidence or argument that the Court may
 14 properly receive at or before the hearing.

15
 16 DATED: July 14, 2008

SANDS LERNER

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 18 By: 

19 NEIL S. LERNER
 20 ARTHUR A. SEVERANCE
 21 Attorneys for Defendant,
 22 MANUEL SOTO, JR.
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is 12400 Wilshire Boulevard, Suite 1300, Los Angeles, California, 90025.

On **July 14, 2008** I served the foregoing documents described as:

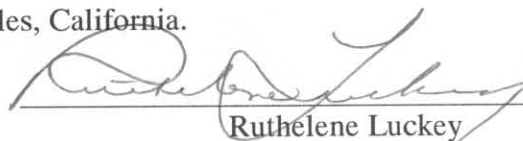
**DEFENDANT MANUEL SOTO, JR.'S NOTICE OF MOTION
AND MOTION TO DISMISS**

on the interested parties in this action:

See attached Service List

- ☒ (BY MAIL) I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- ☐ (BY FACSIMILE) I am responsible for service by facsimile to the above addresses.
- ☐ (PERSONAL) I delivered such envelope by hand to the offices of the addressee.
- ☐ (BY FEDERAL EXPRESS) I am responsible for service by Federal Express to the above address with guaranteed delivery by 10:00 a.m. on _____.
- ☒ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **July 14, 2008** at Los Angeles, California.


Ruthelene Luckey

SERVICE LIST

David Santoyo, Jr. v. Manuel Soto, Jr.

USDC-Southern (San Diego) Case No. 08-CV-1000 W BLM

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<p>Samer Habbas, Esq. LAW OFFICES OF SAMER HABBAS 420 Exchange, Ste. 970 Irvine, CA 92602</p>	<p>Attorneys for Plaintiff, David Santoyo</p>

Mailing Information for a Case 3:08-cv-01000-W-BLM

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- (No e-mail recipients)

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

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